

May 30, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LAURA A. AUSTIN, CLERK
BY: s/ K. SAVILLE
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

JOSE HERNANDEZ-GARCIA,

Defendant.

Case No. 7:25mj113

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Brian Luoma, being first duly sworn, hereby depose and state as follows:

INTRODUCTION

1. This affidavit supports the criminal complaint and arrest warrant charging Jose HERNANDEZ-GARCIA with illegal reentry of a removed alien, in violation of 8 U.S.C. § 1326(a). In particular, on or about May 21, 2025, HERNANDEZ-GARCIA, an alien, was found in the United States, specifically in Galax, Virginia, within the Western District of Virginia, without having obtained the express consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission into the United States, after having been denied admission, excluded, deported, or removed from the United States.

2. The facts and information contained in this affidavit are based upon my training and experience, participation in immigration investigations, personal knowledge and observations, and the observations of other agents. All observations not personally made by me were relayed to me by the individuals who made them or are based on my review of records, documents, and other evidence obtained during the course of this investigation. This affidavit merely describes facts sufficient to support probable cause. It does not include all facts pertaining to the investigation.

AGENT BACKGROUND

3. I am a Special Agent of the U.S. Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), specifically Homeland Security Investigations (“HSI”), and have been since March 2009. I am assigned to the Roanoke Field Office in Roanoke, Virginia. I graduated from the Federal Law Enforcement Training Center’s Criminal Investigator Training Program and ICE Special Agent Training Program. As a Special Agent with ICE, I investigate criminal and administrative violations of the Immigration and Nationality Act.

4. I have extensive knowledge of, and experience reviewing, Alien files (“A-files”), which facilitates my determination of whether a person is present in the United States unlawfully. An A-file is a collection of documents pertaining to a known alien maintained by U.S. Citizenship and Immigration Services (“USCIS”), which contains, among other information, records from any prior removal from the United States and the reason for such removal. The documents, including fingerprint records of the alien, are placed in the A-file by representatives of DHS as well as other agencies. Through my training and experience and review of A-files, I know how to identify aliens present in the United States both lawfully and unlawfully.

APPLICABLE LAW

5. Under 8 U.S.C. § 1326(a), it is unlawful for a non-citizen who has previously been denied admission, excluded, deported, or removed from the United States, to thereafter reenter the United States without having obtained the express consent of the Attorney General of the United States or the DHS Secretary to reapply for admission to the United States. The elements of the offense are as follows: (1) the defendant is not a citizen of the United States; (2) the defendant was denied admission, excluded, deported, removed, or departed the United States while an order of exclusion, deportation, or removal was outstanding; (3) the defendant thereafter

entered the United States, attempted to enter the United States, or was found in the United States;
(4) without having obtained permission from the Attorney General of the United States or the DHS Secretary to reapply for admission to the United States.

PROBABLE CAUSE

6. As set forth below, law enforcement received information that the defendant, Jose HERNANDEZ-GARCIA, was an alien who was illegally present in the United States and who had been previously removed from the United States.

A. Encounter of the Defendant

7. On or about May 21, 2025, a Galax Police Department officer arrested HERNANDEZ-GARCIA for contempt of court in Galax, Virginia. The same day, the Galax General District Court convicted HERNANDEZ-GARCIA for contempt of court (misbehavior in court) and sentenced him to a term of 10 days confinement. Officials also obtained HERNANDEZ-GARCIA's fingerprints.

8. On or about May 22, 2025, ICE's Enforcement Removal Operations ("ERO") in Roanoke received an Immigration Alien Query¹ for HERNANDEZ-GARCIA from the New River Valley Regional Jail, in Dublin, Virginia, stemming from his contempt arrest. ERO ran HERNANDEZ-GARCIA's information against their databases and confirmed his status as a Mexican national, and non-United States citizen, who had been previously removed from the United States, thus indicating that he was currently in the United States without permission.

B. Review of Defendant's Immigration Records

9. On or about May 22, 2025, ERO submitted HERNANDEZ-GARCIA's fingerprints from his May 21 arrest through the Integrated Automated Fingerprint Identification System

¹ An Immigration Alien Query is a request submitted by law enforcement agencies to ICE to determine the immigration status of an individual.

(“IAFIS”) and DHS’s Automated Biometric Identification System (“IDENT”). Both systems matched HERNANDEZ-GARCIA’s fingerprints to his A-file, designated A 206 240 237. ERO’s database checks also confirmed that HERNANDEZ-GARCIA was born in 1983 in Mexico and was a citizen of Mexico.

10. I have personally reviewed HERNANDEZ-GARCIA’s A-File, which confirms his status as a Mexican national and non-United States citizen.

11. Within HERNANDEZ-GARCIA’s A-file, I found an order of an immigration judge, dated August 4, 2016, officially ordering HERNANDEZ-GARCIA’s removal from the United States to Mexico because: HERNANDEZ-GARCIA was not a citizen/national of the United States; he was a native and citizen of Mexico; he arrived in the United States at or near Laredo, Texas, on or about June 22, 2016; and he was not then admitted or paroled after inspection by an immigration officer.

12. I also reviewed an ICE Form I-205 within HERNANDEZ-GARCIA’s A-file, which confirmed his removal from the United States pursuant to the immigration judge’s order. Specifically, the form attests that on or about August 30, 2016, HERNANDEZ-GARCIA was removed from the United States on a deportation flight out of El Paso, Texas. The form confirmed HERNANDEZ-GARCIA as the person removed by his photograph,² fingerprint, and signature. An immigration officer signed the form to verify they witnessed the removal.

13. HERNANDEZ-GARCIA’s A-file does not hold any records indicating that he sought or obtained permission from the Attorney General of the United States or the DHS Secretary to reenter or reapply for admission to the United States. Normally, such records would

² I have compared this photograph to ERO’s more recent photograph of HERNANDEZ-GARCIA. The photos depict the same person.

be contained in an A-file. Further, there are no records of any pending applications by HERNANDEZ-GARCIA for lawful admission into the United States.

14. Based on my review of the circumstances of this case, as well as my personal review of the A-file, I conclude that at some point prior to HERNANDEZ-GARCIA's May 21, 2025, arrest, he unlawfully reentered the United States without being inspected, admitted, or paroled.

CONCLUSION

15. Based on the foregoing, there is probable cause to believe that on or about May 21, 2025, Jose HERNANDEZ-GARCIA, an alien, was found in the United States, specifically Galax, Virginia, which is located in the Western District of Virginia, without having obtained the express consent of the Attorney General of the United States or the DHS Secretary to re-apply for admission into the United States, after having been excluded, deported, or removed from the United States, in violation of 8 U.S.C. § 1326(a).

**BRIAN P
LUOMA**

Brian Luoma
Special Agent
Immigration and Customs Enforcement
Homeland Security Investigations

Digitally signed by BRIAN
P LUOMA
Date: 2025.05.30 12:59:11
-04'00'

Received by reliable electronic means pursuant to Federal Rule of Criminal Procedure 4.1 and subscribed and sworn to me by telephone this 30th day of May, 2025.



The Honorable C. Kailani Memmer
United States Magistrate Judge